

Chapter 173-152 WAC

WATER RIGHTS

WAC

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WAC 173-152-010 Purpose. This rule establishes the framework under which the department can provide for the organization of its work, prioritize basins to be assessed, conduct basin assessments, prioritize investigations of water right applications by geographic areas, and establish criteria for priority processing of applications for new water rights and applications for change or transfer of existing water rights.

[Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). 98-06-042 (Order 97-14), § 173-152-010, filed 2/27/98, effective 3/30/98.]

WAC 173-152-020 Definitions. For the purposes of this chapter the following definitions apply:

- (1) "Department" means the department of ecology.
- (2) "Public water system" means a water supply system as defined in RCW 70.119A.020.
- (3) "Applications to change or transfer" means applications made under RCW 90.03.380 or 90.44.100.
- (4) "Competing applications" means all existing applications for water right from the same water source, whether for a new water right or for a change or transfer of an existing water right.
- (5) "Same water source" or "source of water" means an aquifer or surface water body, including a stream, stream system, lake, or reservoir and any spring water or underground water that is part of or tributary to the surface water body or aquifer, that the department determines to be an independent water body for the purposes of water right administration.

[Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). 98-06-042 (Order 97-14), § 173-152-020, filed 2/27/98, effective 3/30/98.]

WAC 173-152-030 Organization and management of work load. (1) The department may establish regions and maintain regional offices or field offices for the purposes of maximizing the efficiency of its work. Regional offices and their geographic jurisdictions as of the effective date of this rule are as follows:

- (a) Northwest regional office serving Island, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom counties;
- (b) Southwest regional office serving Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum counties;
- (c) Central regional office serving Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, and Yakima counties; and
- (d) Eastern regional office serving Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman counties.

(2) The department will make decisions on new water right applications and applications for change or transfer of an existing water right within a region or within a regional or field office's geographic area in the order the application was received except as provided for in subsection (3) of this section and WAC 173-152-050.

(3) The department may, based on the criteria identified in subsection (4) of this section, conduct an investigation and make decisions on one or more water right applications for the use of water from the same water source. Within a regional office, more than one water source may be investigated at a time. When numerous applications for water from the same water source are being investigated, the decisions will be made in the order in which the applications were received. Each application will be considered individually under the requirements of chapters 90.03 and 90.44 RCW.

(4) Criteria for selecting a water source include, but are not limited to:

- (a) The number and age of pending applications, and the quantities of water requested;
- (b) The ability to efficiently investigate applications because of the availability of data related to water supply and future needs, streamflow needs for instream values, and hydrogeology of the basin;
- (c) The ability of the department to support implementation of local land use plans or implementation of water resource plans;
- (d) The projected population and economic growth in the area; and/or
- (e) The completion of an initial basin assessment as provided for in WAC 173-152-040(5).

[Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). 98-06-042 (Order 97-14), § 173-152-030, filed 2/27/98, effective 3/30/98.]

WAC 173-152-040 Basin assessments. (1) The department may conduct assessments to assemble and correlate information related to water use, water availability, the quantity of water allocated to existing rights, claims, instream flow, and the hydrology of a basin to use in making decisions on future water resource allocation and use. The department may also enter into agreements or contracts with public or private parties to conduct assessments. Geographic areas or same water sources within a regional office service area will be identified or considered for assessment in cooperation with federal, state, tribal, and local jurisdictions and other interested parties. In determining a basin or same water source to assess, the department's consideration may include, but is not limited to, the following factors:

- (a) The number and age of pending applications, and the quantities of water requested;
- (b) The projected population, growth and off-stream needs for water in the area;
- (c) Known water quality problems;
- (d) Existence of distressed or endangered fish stocks;
- (e) Risk of impairment to senior rights (including instream flow rights);
- (f) Availability of data related to water supply and future need, streamflow needs for instream values, and hydrogeology of the basin;
- (g) The number of claims to water rights submitted pursuant to chapter 90.14 RCW; and
- (h) The ability of the department to support local land use activities.

(2) Multiple basin assessments may be conducted within a region at the same time. When the department determines it is in the public interest to conduct a basin assessment, it will:

- (a) Publish notice of the intent to conduct a basin assessment once a week, for two consecutive weeks in a newspaper of general circulation within the geographic area;
- (b) Hold in abeyance decisions on all competing water right applications in the basin after publication of a notice to initiate a basin assessment and until the initial basin assessment is complete and published except for applications prioritized pursuant to WAC 173-152-050; and
- (c) Make decisions on competing applications after the initial basin assessment is complete and published to the extent sufficient information is available.

(3) Initial basin or water source assessments will be conducted to assemble the following existing information:

- (a) Physical characterization of the watershed related to:
 - (i) Climatic impacts to water resources;
 - (ii) Geology;
 - (iii) Streamflow trends;
 - (iv) Ground water elevation trends and the contribution of ground water to streamflows; and
 - (v) Surface and ground water quality in the basin or water source.
- (b) Out-of-stream water use characterization related to:
 - (i) Water rights, federal rights, and claims to water rights;
 - (ii) Estimated use of water pursuant to water rights and claims to water rights;
 - (iii) Water use pursuant to RCW 90.44.050;
 - (iv) Extent of unauthorized water use; and
 - (v) Potential future demands for out-of-stream water use in the basin.
- (c) Instream water use characterization related to:
 - (i) National Pollution Discharge Elimination System permits and the need for instream flow for pollution assimilation;
 - (ii) Fish stocks and habitat requirements;
 - (iii) Wildlife habitat requirements;
 - (iv) Recreational requirements; and

(v) Water rights and claims to water rights.

(4) Upon completion and publication of the initial basin assessment, the department in consultation with the public and federal, state, tribal, local jurisdictions and interested parties will evaluate the basin assessment. The evaluation will assess the data, analysis, and presentation of information in the basin assessment in terms of quality, adequacy, and utility to make decisions on future water resource allocation and use.

(5) The department will make decisions on competing applications for water from a source of water within the basin where sufficient information for water resource allocation exists. If the department determines that the information assembled and correlated is not sufficient, the department may withdraw the water source from appropriation pursuant to RCW 90.54.050(2). The department in consultation with the public, federal, state, tribal, local jurisdictions and interested parties will design and conduct additional investigations, to the extent resources allow, to obtain the information necessary to make future decisions on water allocation and use.

(6) The information obtained and compiled during an initial basin assessment of the water resources in a basin or water source will be contained in an open file technical report at the regional or field office.

[Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). 98-06-042 (Order 97-14), § 173-152-040, filed 2/27/98, effective 3/30/98.]

WAC 173-152-050 Criteria for priority processing of competing applications. (1) An application may be processed prior to competing applications if the application resolves or alleviates a public health or safety emergency caused by a failing public water supply system currently providing potable water to existing users. Inadequate water rights for a public water system to serve existing hook-ups or to accommodate future population growth or other future uses do not constitute a public health or safety emergency. The application must be filed specifically to correct the actual or anticipated cause(s) of the public water system failure. To be considered a failing public water system, the system must meet one or more of the following conditions:

(a) The department, upon notification by and in consultation with the department of health or local health authority, determines a public water system has failed, or is in danger of failing within one year, to meet state board of health standards for the delivery of potable water to existing users in adequate quantity or quality to meet basic human drinking, cooking and sanitation needs;

(b) The current water source has failed or will fail so that the public water system is or will become incapable of exercising its existing water right to meet existing needs for drinking, cooking and sanitation purposes after all reasonable conservation efforts have been implemented; or

(c) A change in source is required to meet drinking water quality standards and avoid unreasonable treatment costs, or the state department of health determines that the existing source of supply is unacceptable for human use.

(2) An application may be processed prior to competing applications if the department determines:

(a) Immediate action is necessary for preservation of public health or safety; or

(b) The proposed water use is nonconsumptive and if approved would substantially enhance or protect the quality of the natural environment.

(3) An application for change or transfer to an existing water right may be processed prior to competing applications provided one or more of the following criteria are satisfied:

(a) The change or transfer if approved would substantially enhance the quality of the natural environment; or

(b) The change or transfer if approved would result in providing public water supplies to meet general needs of the public for regional areas;

(c) The change or transfer was filed by water right holders participating in an adjudication, and a decision is needed expeditiously to ensure that orders or decrees of the superior court will be representative of the current water use situation.

(4) Within each regional office, the department shall process applications satisfying the criteria in subsections (1) through (3) of this section in the following priority:

(a) Public health and safety emergencies under subsection (1) of this section;

(b) Preservation of other public health and safety concerns under subsection (2)(a) of this section;

(c) Transfers or changes under subsection (3)(a) of this section;

(d) Transfers or changes under subsection (3)(b) of this section;

(e) Transfers or changes under subsection (3)(c) of this section; and

(f) Nonconsumptive uses under subsection (2)(b) of this section.

[Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). 98-06-042 (Order 97-14), § 173-152-050, filed 2/27/98, effective 3/30/98.]

WAC 173-152-060 Exceptions. Nothing in this chapter precludes the department from processing applications or requests filed for temporary permits, preliminary permits or for emergent or emergency circumstances under RCW 43.83B.410, 90.03.383(7), or 90.03.390 and/or where the law provides a specific process for evaluation of an application and issuance of a decision.

[Statutory Authority: RCW 43.21A.064(8) and 43.27A.090(11). 98-06-042 (Order 97-14), § 173-152-060, filed 2/27/98, effective 3/30/98.]